


Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin 
DATE: October 7, 2014
RE: 15-0339VR; 31 North Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RM-W Ward: 3

Owner/Representative: Cynthia Wheelock Smith

Request: Variance from front yard setback on existing vacant lot.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from the applicable front yard setback on an existing vacant lot. The subject property fronts on Depot Street, but all of its neighboring properties front on both North Avenue and Depot Street. The buildings on these neighboring properties are set close to North Avenue and relatively far from Depot Street and, therefore, create a prohibitive front yard setback requirement for the subject property.

No development is included in this application. The variance is sought as a precursor to a potential single family home to be filed under separate permit application if the variance is granted.

Previous zoning actions for this property are as follows:

- 12/18/97, Application for, and subsequent withdrawal of, permit to construct home

Recommendation: Variance approval of front yard setback requirement as per, and subject to, the following findings and conditions:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The lot is small at just 4,180 sf and 44' of road frontage. The lot is also steeply pitched except for the upper, easternmost end. The requested variance, however, does not relate to these particular characteristics. The subject property is the only one along the eastern side of Depot Street that does not also front on North Avenue. The buildings on these other properties are set close to North Avenue with relatively deep setbacks from Depot Street. The variance is requested because of the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based on the average of three properties at 33, 55, and 1 North Avenue. These properties all have two front yards – on North Avenue and on Depot Street. Their front yard setbacks along Depot Street are 63', 56', and 116', respectively. The average of these setbacks is 78'. A 78' (+/- 5') on a 95' – 114' deep lot, combined with a rear yard setback of 25% results in an unbuildable lot. Compliance with the front yard setback is impossible. **(Affirmative finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As noted above, a 78' (+/- 5') front yard setback combined with a 25% rear yard setback results in virtually no building envelop. Compliance with the front yard setback is impossible.

(Affirmative finding)

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to the front yard setback is related to the fact that front yard setback requirements are based on neighboring properties. It is not a hardship created by the applicant.

(Affirmative finding)

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance would enable the construction of a single family home on a vacant lot located within the waterfront medium density residential zone. **(Affirmative finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested 10' front yard setback allows for a reasonable building envelope and minimizes encroachment into the steep slope on the property. **(Affirmative finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

II. Conditions of Approval

1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*.
2. No development is included in this approval. All development is subject to a separate zoning permit and must meet all other dimensional requirements.
3. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

VARIANCE REQUEST FOR DEPOT STREET PROPERTY

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The Lot is **#189 on Tax Map 43-3, Span # 114-035-14386**. It is also referenced as # 33 North Avenue (Rear), as well as # 29, and # 31 North Avenue in other city documents, though it is not on North Avenue. This lot is a remnant, owned by the Smith family since the 1830s, of a once much larger parcel.

The lot meets requirements of **5.2.1. EXISTING SMALL LOTS** with dimensions of 95 feet x 46 feet x 114 feet x 40 feet. It is over 4000 square feet in area and has a minimum width and depth of 40 feet.

It is zoned **Residential Medium Density Waterfront**.

The property is a mostly sloped, and wooded.

The variance request is for a 10 foot setback from the front of the property on Depot Street.

Reasons for the request are;

- 1) To build on the lower end of the lot so the structure does not obscure any of neighbors' views.
- 2) More accessible for owner who is physically disabled, and returning to Burlington in retirement.
- 3) Least disruption of natural steep slope and vegetation.
- 4) Less expense of connecting utilities.
- 5) More uniform with surrounding structures.

The proposed dwelling will comply with all other setbacks and height limits.

CYNTHIA WHEELLOCK SMITH

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Residence on Depot Street: Fitting into Burlington's PlanBTV

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Lot #188 on Depot Street is outside the boundaries of the *PlanBTV, Downtown and Waterfront*, of 2013, *The Waterfront Revitalization Plan (WRP)* of 1998 and *The Harbor Management Plan (HMP)* of 2000, but Depot Street is mentioned as an important street so I have reviewed PlanBTV with the proposed residence in mind. The following are quotes from the PlanBTV adopted in 2013.

"Show me the money....What's important to understand is that much of what will be needed to bring this vision to life is private investment on individual properties. ...most of the cost and responsibility for development will fall to individual private and non-profit property owners..." page 8

"Only 12% of Homes in Burlington's Downtown and Waterfront are owner occupied market-rate homes." page 29

"The Waterfront in particular has a lack of buildings to enclose and activate the public space."

"Underutilized Sites...Though the city may appear build(sic) out because of the lack of large undeveloped parcels, there are numerous small and medium size parcels that are underutilized. This includes vacant lots, parking lots, buildings with suburban setbacks, and single story buildings. All of these conditions lead to unmet potential and under-representation, in particular, of residential uses within the downtown." page 34

"What the downtown and waterfront need is more usable space..." page 50

"Creating more downtown housing was found to be the most effective strategy to reduce traffic congestion." page 52

"Facilitate infill, allow for a more diverse range of unit and building types, and simplify the public approvals process by creating a form-based zoning code for the downtown and waterfront area." page 53

"The waterfront is well known and celebrated as a world-class destination....However, it has yet to achieve the critical mass of people and the mix of uses needed to extend this vitality into the winter season. ...More retail, recreation, hospitality, entertainment, office, and even residential uses are needed to make the waterfront an active and vibrant place the whole year round." page 57

"More Housing Period....A greater diversity of housing choices will ensure a broader and healthier customer and employment base to support new and expanding downtown business, in turn, boosting economic vitality. Each additional household can bring as much as another \$16,000 in annual spending to the downtown. This in turn helps to support local businesses and help diversify the retail mix with offerings such as hardware, electronics, grocery, and general retail. More housing will support rapidly growing businesses that are desperate to attract and retain a highly educated workforce. More housing will support the retail and hospitality workers that are the backbone of our service economy and urban entertainment culture." "With a historic residential vacancy rate of less than 3%, the creation of

additional housing has proven to be a tough nut to crack. However, there are a number of strategies that can and should be employed to encourage the creation of significantly more housing- particularly affordable and affordable market-rate units. The time is especially good given historically low interest rates and construction costs.” page 60

“Diversity In Housing Choices.....More and more the residential neighborhoods surrounding the downtown are dominated by a single housing type-large 4+ bedroom units in converted historic homes- at prices that only students are able and willing to pay. This trend is mostly due to residential zoning densities and parking requirements that make it extremely difficult to create smaller units such as studios and 1-2 bedroom units, as well as detached units in varying configurations. Yet there are many additional building, unit, and ownership arrangements that can be introduced and priced to encourage a greater diversity of residents, including young professionals, couples, empty-nesters, retirees, and students. This is simply a case where more is better-more choices, more types, more affordable, more diversity.....more housing period.” page 61

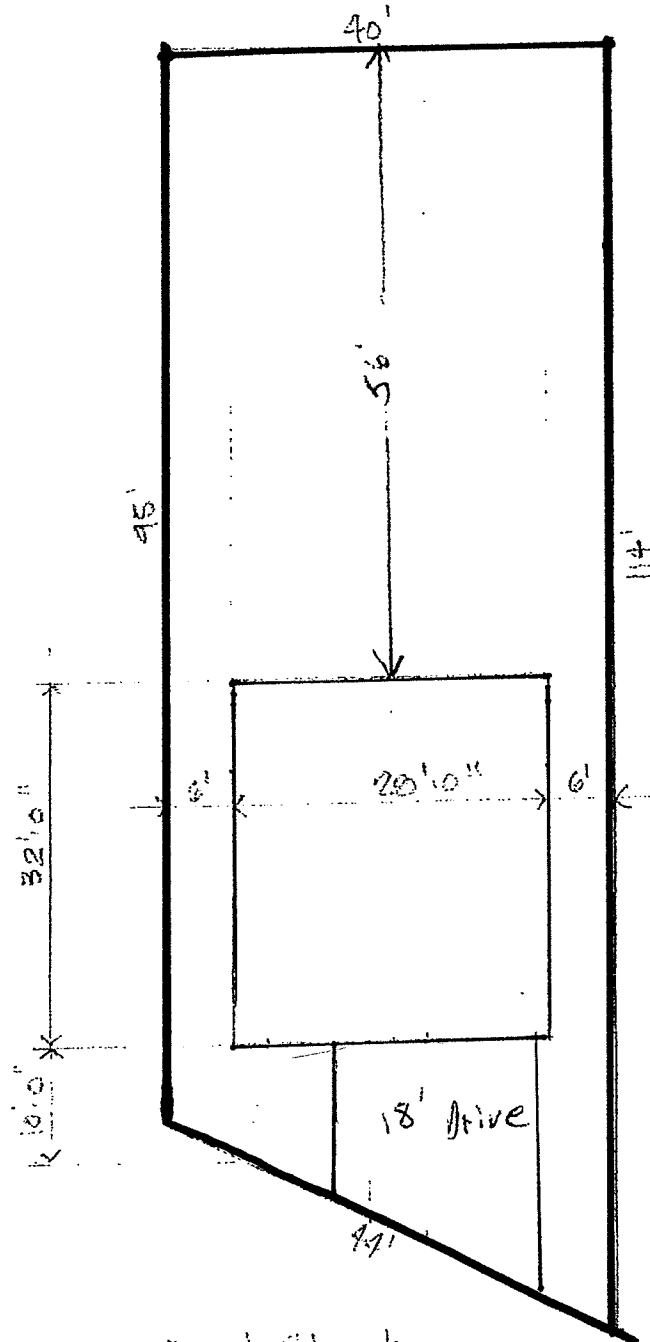
“Downtown Infill Housing. A significant number of downtown properties are underutilized and underdeveloped when compared to what current zoning allows. New infill buildings and adaptive reuse of existing buildings in and surrounding the downtown core should be a high priority. Creating small, high density, modern and eclectic living spaces would attract and meet the needs of several demographic groups interested in urban living. New construction and rehabilitated urban housing designed at a variety of price points could change the economics and enable many new people to live in the downtown. New Americans have expressed the need for larger, more centrally located affordable units.” page 62

“A strong focus on residential development could also greatly help to reduce traffic congestion and parking demand. Adding additional housing downtown has a greater impact on congestion reduction than increasing transit and other modes.” page 70

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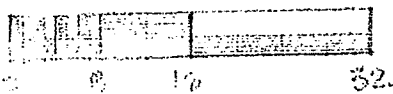
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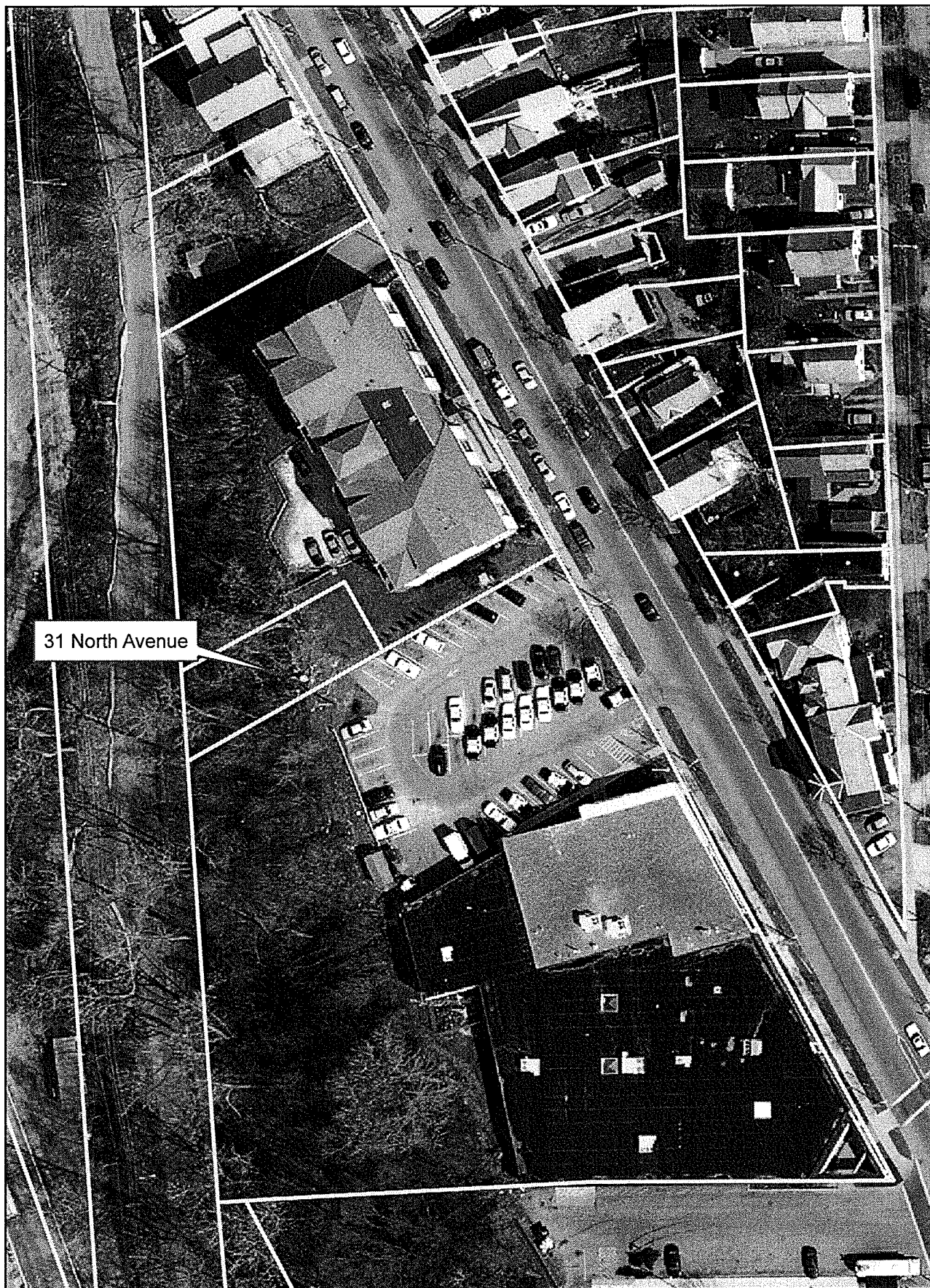


Depot Street

1" = 10'



31 North Avenue



75 37.5 0 75 Feet

